

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

**JACINTO RAMIREZ, LUIS MORALES,
ORLANDO PIEDRA FLORES, AND
SALVADOR LEON, On Behalf of
Themselves and All Other Similarly
Situated,**

Plaintiffs,

v.

LOAD TRAIL, LLC,

Defendant.

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§ CIVIL ACTION No. 4:18-CV-00756-ALM
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**DEFENDANT LOAD TRAIL, LLC'S OBJECTIONS TO PLAINTIFFS' EVIDENCE IN
SUPPORT OF ITS OPPOSED MOTION TO CONDITIONALLY CERTIFY A
COLLECTIVE ACTION**

Defendant Load Trail, LLC files its Objections to Plaintiffs' Evidence in Support of Its Opposed Motion to Conditionally Certify a Collective Action and, in support thereof, would respectfully show unto the Court as follows:

I. INTRODUCTION

Plaintiffs Jacinto Ramirez, Luis Morales, Orlando Piedra Flores, and Salvador Leon filed their Opposed Motion to Conditionally Certify a Collective Action and to Issue Notice (Plaintiffs’ Motion) on July 12, 2019. (*See* Dkt. 40). Plaintiffs’ Motion is supported by 13 declarations of Defendant’s former employees detailing certain information relating to their employment with Defendant. (*See* Dkt. 40-1 – 40-13; Dkt. 40-15). Substantial portions of these declarations are not based on the declarants’ knowledge but rather are replete with improper testimony that lacks foundation, constitutes hearsay, or is pure speculation. In seeking class certification, Plaintiffs’ initial factual showing at the notice stage “must be based on competent evidence in order to avoid

stirring up unwarranted litigation.” *Allen v. McWane, Inc.*, No. Civ.A.2:06-CV-00158, 2006 WL 3246531, at *2 (E.D. Tex. Nov. 7, 2006). Defendant therefore objects to the statements identified in the following section and respectfully requests that the Court give no weight to these statements.

II. OBJECTIONS TO EVIDENCE

Defendant specifically objects to the following evidence submitted in support of Plaintiffs’

Motion:

No.	Citation	Statement	Objection(s)
	Declaration of Jacinto Ramirez, Dkt. 40-2 at 8 ¶ 8	“When I was hired my manager, Jacob, told me that I would be paid for the first two weeks at an hourly rate and then after that I would be paid by production.”	Hearsay
	Declaration of Jacinto Ramirez, Dkt. 40-2 at 9 ¶ 14	“On occasion, these deductions resulted in manual labor employees similar to myself receiving zero compensation for welding a trailer, despite having worked numerous hours. I know from my conversations with another welder, Jorge Carcamo, that on at least one occasion he received zero compensation for a trailer he welded due to these deductions.”	Lack of foundation; hearsay
	Declaration of Jacinto Ramirez, Dkt. 40-2 at 9 ¶ 15	“Prior to receiving these bonus [<i>sic</i>] myself, and others working as manual labor employees, were told that if we met certain production goals that we would receive the bonuses.”	Hearsay
	Declaration of Jacinto Ramirez, Dkt. 40-2 at 9-10 ¶ 16	“At the facility I observed numerous other employees perform manual labor tasks. I know many of these manual laborers were paid in a manner similar to me; this includes employees working in departments other than welding, such as painters. I know this to be true because I spoke with others working as painters regarding how they were being paid.”	Lack of foundation; hearsay
	Declaration of Jacinto Ramirez, Dkt. 40-2 at 10 ¶ 20	“While I clocked in and out each day, based on Load Trail’s use of the ticket system to track production and my personal recollection of my hours worked, I do not believe the hours reported on my	Speculation

		paystubs consistently accurately documented the number of hours I actually worked.”	
	Declaration of Luis Morales, Dkt. 40-3 at 10 ¶ 4	“In addition, while I worked at Load Trail, I spoke with and observed many other manual labors who were paid by production that regularly worked over forty hours each week. I know this to be true for specifically for welders such as Itizel Morales, Fitzon Gonzalez, and Juan Gerardo Gonzalez.”	Hearsay; lack of foundation
	Declaration of Luis Morales, Dkt. 40-3 at 10 ¶ 5	“However, my total “clocked” hours were not reported on my paystub each week.”	Lack of foundation
	Declaration of Luis Morales, Dkt. 40-3 at 11 ¶ 9	“When I was hired, my manager Jacob, told me that for the first two weeks I would be paid hourly. He said that after two weeks I would then be paid by production.”	Hearsay
	Declaration of Luis Morales, Dkt. 40-3 at 11 ¶ 11	“For instance, my supervisor told me that if our welding team completed a specified number of trailers, we would be paid additional compensation after each trailer.”	Hearsay
	Declaration of Luis Morales, Dkt. 40-3 at 11-12 ¶ 13	“I know many other shop employees who were also paid in a manner similar to myself during this time. They, like me, were paid using a similar compensation scheme. I know this to be true based on my conversations with my co-workers regarding our pay; specifically for welders such as Fitzon Gonzales, Juan Gerardo Gonzales, and Leon Garcia.”	Lack of foundation; hearsay
	Declaration of Itiel Sanchez, Dkt. 40-4 at 7 ¶ 7	“When this happened I told my supervisor about it. My supervisor told me that if the number wasn’t entered into the system it didn’t count as a completed ticket/trailer and I wouldn’t be paid for it unless I found the printed ticket.”	Hearsay
	Declaration of Itiel Sanchez, Dkt. 40-4 at 7 ¶ 8	“In addition to not paying me for all trailers completed, Load Trail also did not report my actual hours worked on each paystub.”	Lack of foundation

	Declaration of Itiel Sanchez, Dkt. 40-4 at 7-8 ¶ 8	“However, the total number of hours I was at the facility working did not correspond each week to the number of hours reported on my paystub.”	Lack of foundation
	Declaration of Itiel Sanchez, Dkt. 40-4 at 8 ¶ 9	“Load Trail’s time keeping and pay practices for those paid for production, like myself, resulted in us not receiving all overtime compensation owed. Myself, and those like me, did not receive all overtime compensation due because our paystubs did not accurately report the hours we worked and we were not paid for hours actually worked, but only an amount for each trailer completed.”	Lack of foundation
	Declaration of Itiel Sanchez, Dkt. 40-4 at 8 ¶ 9	“Even though my paystub purported to pay me some overtime compensation, I was not paid all overtime compensation due because of these reasons. Based on my conversations with my coworkers who worked as welders I know this to be true as well for Jacinto Ramirez, Raymundo Ramirez, Jorge Carcamo, Ignacio Barios, Manuel Barios, and Gustavo Sanchez.”	Hearsay
	Declaration of Itiel Sanchez, Dkt. 40-4 at 8 ¶ 12	“While I clocked in and out each day, based on Load Trail’s use of the ticket entry system to track production and my personal recollection of my hours worked, I do not believe the hours reported on my paystubs consistently accurately documented the number of hours I actually worked.”	Speculation
	Declaration of Gelacio Juarez, Dkt. 40-5 at 6 ¶ 7	“From my conversations with my co-workers I know like me, Rene Osorio and Ernesto Corona were welders who were paid by production.”	Hearsay
	Declaration of Gelacio Juarez, Dkt. 40-5 at 7 ¶ 12	“Moreover, I do not believe the number of hours were always accurate on my pay stubs.”	Speculation
	Declaration of Gelacio Juarez, Dkt. 40-5 at 7 ¶ 13	“I know many other employees who also performed manual labor tasks that like me that were paid on a performance basis, regularly worked over 40 hours in a workweek, and were not paid all overtime due because they were only paid piece rate for production, and not based on all hours	Lack of foundation; hearsay

		actually worked. I know this to be true based on my observations and conversations with my co-workers. In particular, I know this to be true for Rene Osorio and Ernesto Corona.”	
	Declaration of Carmen Garcia, Dkt. 40-6 at 10-11 ¶ 4	“Based on my personal observations and conversations with other painters I worked with, I know that routinely working over forty hours in a workweek was common for painters who were paid by production at Load Trail. Specifically, I know this to be true for Jose Torres.”	Lack of foundation; hearsay
	Declaration of Carmen Garcia, Dkt. 40-6 at 11 ¶ 6	“I know based on my personal observations and conversations with others, this was true for Jose Torres, he too was often subjected to hours of unpaid wait time.”	Hearsay
	Declaration of Carmen Garcia, Dkt. 40-6 at 11 ¶ 7	“If a trailer had to be repainted, painters like myself, did not receive any additional compensation for performing this task. Specifically, I know this to be true also for Jose Torres based on my personal observations and conversations with him.”	Lack of foundation; hearsay
	Declaration of Carmen Garcia, Dkt. 40-6 at 11-12 ¶ 9	“I know from my observations and conversations with other shop employees paid by production, they also used similar time and productivity keeping method of the punch clock, computer ticket entry, and manual ticket tracking. They were also primarily paid by the number of trailers they worked on, they were not paid for their wait time, and thus were not paid all overtime for all hours actually worked over forty each workweek.”	Lack of foundation; hearsay
	Declaration of Carmen Garcia, Dkt. 40-6 at 12 ¶ 10	“Despite these time and productivity keeping methods, I do not believe the hours reported on my pay stubs consistently documented the number of hours I actually worked.”	Speculation
	Declaration of Carmen Garcia, Dkt. 40-6 at 12 ¶ 10	“I also do not believe I was always paid for all the trailers that I painted.”	Speculation
	Declaration of Carmen Garcia, Dkt. 40-6 at 12 ¶ 10	“I know other manual laborers paid by production that experienced these same issues. Specifically Jose Torres and Oscar	Hearsay

		Martinez. I know this to be true because they told me they experienced these same issues.”	
	Declaration of Carmen Garcia, Dkt. 40-6 at 12 ¶ 12	“Like others employees primarily paid by production, to the best of my recollection, I believe I was occasionally paid by the hour and given some overtime compensation. However, even when I received some overtime pay, I did not receive all overtime pay due. This was because the overtime rate was calculated improperly (i.e. my bonuses were not included and/or the hours reported in my paystub were not accurate). I also spoke with Jose Torres and Oscar Martinez who work as painters and they told me this was true for them as well.” (citation omitted)	Speculation; hearsay
	Declaration of Saul Aguilar, Dkt. 40-7 at 14 ¶ 13	“Based on my observations and conversations with the following employees I know them to have regularly worked over forty hours in a workweek and to be paid by production: Marcos Campos who worked as a plasma cutter, Prudencio Rivera who transported parts, Rolando Lino who performed manual labor tasks and Jose Luis Martinez who also performed manual labor tasks. Thus, like me they were not paid for the actual number of hours they worked nor were they paid all overtime compensation due.”	Lack of foundation; hearsay
	Declaration of Orlando Piedra Flores, Dkt. 40-8 at 12 ¶ 9	“Likewise, those I observed working in the inventory department, like me, did not use ticket numbers to track their daily work. From my conversations with them, I know them to be paid by the hour like me. Specifically, I know Raymundo Olmedo and Lucy Madrid in maintenance and cleaning, were paid hourly and performed tasks similar to mine.”	Hearsay
	Declaration of Orlando Piedra Flores, Dkt. 40-8 at 13 ¶ 11	“I was promised in advance that I would receive a bonus if certain criteria was met. My supervisor, William told me that, ‘If no materials were missing and everything was in order, I would receive a bonus.’ To the best of my knowledge, this bonus was not included in calculating my overtime pay.”	Hearsay; lack of foundation

	Declaration of Orlando Piedra Flores, Dkt. 40-8 at 13-14 ¶ 15	<p>“I know many other employees who performed manual labor tasks that were paid on an hourly basis, received bonuses, regularly worked over 40 hours in a workweek, and were not paid all overtime. They were not paid all overtime due because of Load Trail’s failure to correctly calculate overtime pay and its practice of not reporting all hours worked on our paystubs. I know this to be true based on my observations and conversations with my coworkers. For example, Raymundo Olmedo who works as a cleaner in the finishing department told me that his experience was similar to mine with his time and pay.”</p>	Lack of foundation; hearsay
	Declaration of Agustin Coronado, Dkt. 40-9 at 10 ¶¶ 8-9	<p>“I know several other employees performing manual labor tasks in the finishing department that were also paid on an hourly basis. These people included Cristian Montano, Francisco Luna, and Abraham de la Rosa who installed flooring on the trailers; Hector Coronado who fixed the trailers in the finishing area and installed hydraulic brakes to the trailers; and Gustavo Cruz who installed hydraulic brakes to the trailers.</p> <p>I know this to be true for the coworkers I named because we all worked in the finishing area and we would frequently converse while we performed our job duties.”</p>	Lack of foundation; hearsay
	Declaration of Agustin Coronado, Dkt. 40-9 at 11 ¶ 12	<p>“While I ‘clocked in’ and ‘clocked out’ each day, I do not believe the number of hours were always accurate on my pay stubs.”</p>	Speculation
	Declaration of Agustin Coronado, Dkt. 40-9 at 11 ¶ 13	<p>“However, I do not believe I received all overtime pay that I was owed or that the overtime pay I did receive was correctly calculated. I based this belief on my recollection that the hours I worked were not always reported accurately on my paystub. Also, I received bonus pay and I do not believe that bonus pay was included</p>	Speculation

		in the amount of any overtime pay I received.” (citation omitted)	
	Declaration of Roberto Regalado Martinez, Dkt. 40-10 at 6 ¶ 7	“I also know from my conversations with these employees that they were paid by the hour. Specifically, I know this to be true for Gonzulo Rios who worked as a sandblaster and Fidilo Perez who installed axels on the trailers.”	Hearsay
	Declaration of Roberto Regalado Martinez, Dkt. 40-10 at 6 ¶ 8	“While we ‘clocked in’ and ‘clocked out’ each day, I do not believe the number of hours were always accurate on our pay stubs.”	Speculation
	Declaration of Roberto Regalado Martinez, Dkt. 40-10 at 6 ¶ 8	“I have also heard by coworkers, that I know to be paid hourly and work in the finishing department, complain that this has happened to them as well. Specifically, I know this to be true for Gonzulo Rios who worked as a sandblaster and Fidilo Perez who installed axels on the trailers.	Hearsay
	Declaration of Roberto Regalado Martinez, Dkt. 40-10 at 7 ¶ 10	“Also based on my conversations with my coworkers I believe this to be true as well for many others working at Load Trail as manual laborers paid by the hour. Specifically, I know this to be true for Gonzulo Rios who worked as a sandblaster and Fidilo Perez who installed axels on the trailers.”	Hearsay
	Declaration of Salvador Leon, Dkt. 40-11 at 21 ¶ 13	“I have personal knowledge from my observations and conversations with other manual labor employees paid by production, such as painters and welders, that ticket numbers were also used to track their production and that their pay was calculated in a similar manner. Thus, they too were not paid all overtime compensation due for hours worked over forty in a workweek.”	Hearsay
	Declaration of Salvador Leon, Dkt. 40-11 at 22 ¶ 17	“Based on my personal observations and conversations with other employees, I know that the tasks I performed are similar to the tasks others assigned to assist the supervisors performed; I know that the finishing, fabrication, inventory and welding departments had employees assigned to assist the supervisors.”	Hearsay

	Declaration of Salvador Leon, Dkt. 40-11 at 22 ¶ 20	“I know other assistants to supervisors who were paid on a salary basis and regularly worked over 40 hours in a workweek. Thus, they too did not receive all overtime compensation due. I know this to be true for Isidro Leon.”	Lack of foundation
	Declaration of Isidoro Leon Hernandez, Dkt. 40-12 at 13 ¶ 14	“Based on my personal observations and conversations with other assistants to supervisors, I know that the tasks I performed are similar to the tasks other assistants to supervisors performed including those assigned to the fabrication and finishing departments. These lead hands include Luis Aguilar, Ofelio Mercado, Salvador Leon, and Manual Rios (before he became a supervisor he was a lead hand).”	Hearsay
	Declaration of Isidoro Leon Hernandez, Dkt. 40-12 at 14 ¶ 15	“However, to the best of my knowledge, I was not paid all overtime compensation I was owed because bonuses were not included in my overtime pay and the number of hours I actually worked were not always accurately reported on my paystub. I know this to be true also for Manuel Rios when he was a lead hand based on my conversations with him and observations of him.”	Lack of foundation; hearsay
	Declaration of Isidoro Leon Hernandez, Dkt. 40-12 at 14 ¶ 19	“During my time working at Load Trail, I know numerous other assistants to supervisors who were paid similar to me, primarily a fixed weekly amount regardless of the number of hours they worked and generally worked over forty hours each workweek. Thus these assistant to the supervisors, like me, were not paid all overtime compensation due. These lead hands include Luis Aguilar, Ofelio Mercado and Salvador Leon.”	Lack of foundation
	Declaration of Javier Bernardino, Dkt. 40-13 at 6 ¶ 4	“I know this was true for other welders I worked with from speaking with them and observing their work schedules. Specifically, welders such as Axial Rodriguez, Salvador Reyes, Benjamin Hernandex, Rubicel Avalos, and Edwin Samoyoa.”	Hearsay

III. CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Defendant Load Trail, LLC respectfully requests that the Court sustain its objections to the foregoing evidence submitted in support of Plaintiffs' Opposed Motion to Conditionally Certify a Collective Action and to Issue Notice and that the Court give no weight to the objectionable statements identified above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 17, 2019, a true and correct copy of the foregoing document was served upon Plaintiff's counsel of record via the Court's ECF system as follows:

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